IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 15TH JUNE 2007 / 25TH JYAISHTA 1929

WP(C).No. 15171 of 2005(F)

AGAINST THE ORDER DATED 22/03/05 IN EP 375/1996 IN OS.952/1991 of PRL.SUB COURT,TRIVANDRUM

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PETITIONER:

C. VISWAKUMAR, S/O. LATE CHELLAPPAN,
AGED 56 YEARS, RESIDING AT C.R.A.201,PADMAVILASAM,
GOWREESA PATTAM, PATTAM P.O.,THIRUVANANTHAPURAM.

BY ADV. SRI.THOMAS JOSEPH

RESPONDENT:

KUMARI PADMAJA, D/O. KUTTAN NAIR,
AGED ABOUT 50 YEARS, RESIDING AT PADMASREE,
OPPOSITE RAJBHAVAN, VELLAYAMBALAM,
THIRUVANANTHAPURAM.

BY ADV. SRI.NAGARAJ NARAYANAN
SRI.NAIR AJAY KRISHNAN
SRI.P.K.SUKUMARAN
SRI.A.S.SABU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 15171 OF 2005

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF ORDER IN EP NO.375 OF 1996 IN OS NO.952 OF 1991 OF THE PRL. SUB JUDGE, THIRUVANANTHAPURAM DT.22.3.05.

EXT.P2 : TRUE COPY OF THE OBJECTION FILED ON 21.03.05.

RESPONDENT'S EXHIBITS:

EXT.R1 (A) : TRUE COPY OF THE AFFIDAVIT AND PETITION FILED BY THE PETITIONER BEFORE THE SUB COURT, THIRUVANANTHAPURAM DT.2.4.05.

EXT.R1(B) : TRUE COPY OF THE AFFIDAVIT AND PETITION FILED BY THE PETITIONER BEFORE THE SUB COURT, THIRUVANANTHAPURAM DT.2.4.05.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 15171 OF 2005

Dated this the 15th day of June, 2007

JUDGMENT

Ext.P1 order directing the arrest of the judgment debtor-writ petitioner in execution of a money decree is under challenge. Ext.P1 will show that the execution court accepted the affidavit submitted by the respondent-decree holder on the basis of no objection has been filed by the petitioner to the same. Under Ext.P1, the learned Munsiff even directed the police to assist the amin in the matter of arresting the petitioner. In this Writ Petition under Article 227, the ground which is seriously urged by the petitioner is that Ext.P1 is not preceded by an enquiry as envisaged by Order XXI Rule 40. A detailed counter affidavit has been field by the respondents. Ext.R1(b) is the copy of the affidavit which the respondent had filed before the court below. The learned counsel for the respondent would high light paragraph 4 of that affidavit wherein it is stated inter alia as follows: “time may be granted till my share is sold in order to raise the money” I am not prepared to read the affidavit, Ext.R1(b), dehors the other sentences therein. The affidavit certainly contends that the petitioner has no means to pay the decree debt, though it does not contend that he has no means to pay even a substantial portion of the decree debt. Along with the affidavit even a

medical certificate showing that the petitioner is seriously ill has been produced. The contention of the petitioner that Ext.P1 is not preceded by an enquiry into the financial ability of the petitioner to pay the decree debt in a lump or a substantial portion thereof, is correct. But at the same time the circumstance that no specific contention has been raised by the petitioner regarding his ability to pay even a substantial portion of the decree debt should not go unnoticed. The decree debt as on date should be around Rs.1,60,000/-. Under the above circumstances I set aside Ext.P1 on condition that the petitioner pays a sum of Rs.40,000/- to the respondent-decree holder and produce a memo before the execution court within one month. If the execution court notices the said memo that court will post the execution petition for enquiry into the means of the writ petitioner and pass fresh orders on the Execution Petition in accordance with law. If payment is not made as directed above, Ext.P1 will stand confirmed and the Writ Petition will stand dismissed.

PIUS C. KURIAKOSE, JUDGE

btt